IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.01.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

C.M.A.No.1114 OF 2006

The Manager,
National Insurance Co. Ltd.,
M.T.P.C.O.No.751, Mount Road,
Chennai 600 002 ... Appellant
2nd Respondent

vs.

1. Padmavathy
2. Selvi
3. Ramesh
4. Kumar
5. Shantha
6. Parimala
7. Rangeela
8. Balaji ... Respondents/Petitioners No. 1 to 8
9. K.C.Subba Reddy ... Respondent No.9/ Ist Respodnent

R9(remained exparte)in the Lower Court and hence notice dispensed with for him. (RR7 & 8 are declared as major and the Ist Responden is discharged from guardianship of the respondents 7 & 8 Vide Order of Court dated 15.11.2006 and made in CMP.Nos. 10281 & 10282/06)

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 31.03.2005 made in M.A.C.T.O.P.No.600 of 2003 on the file of the Motor Accidents Claims Tribunal (Subordinate Judge), Thiruvallur.

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For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.G.Jeremiah
for Mr.P.Krishnan

J U D G M E N T

Aggrieved by the quantum of compensation, the Insurance Company has preferred this appeal. Wife and seven children of the deceased are the claimants.

2. The deceased was aged 52 years at the time of accident and was working as a Telephone Supervisor in B.S.N.L., Vellore. On 22.10.2003,

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about 9.30 a.m., when the deceased was travelling in a motor-cycle, bearing Registration No.TN 22H 1611 along the left side of the road from his residence to his office, near Ponnu marriage hall, a lorry, bearing Registration No.T.P.02 T 0473 dashed against the motor-cycle from the rear side and the deceased sustained multiple injuries and died on the same day.

3. Respondents/claimants claimed Rs.15,00,000/- as compensation. The Tribunal on evaluation of pleadings and evidence awarded compensation of Rs.12,12,096/- with interest at the rate of 9% per annum, under the following heads:

(i) Loss of earning	:	Rs. 10,97,096.00
(ii) Funeral expenses	:	Rs. 5,000.00
(iii) Loss of consortium	:	Rs. 25,000.00
(iv) Loss of dependency	:	Rs. 25,000.00
(v) Shock & mental agony	:	Rs. 20,000.00
(vi) Loss of happiness due to the death of the deceased	:	Rs. 20,000.00
(vii) Loss of love and affection	:	Rs. 20,000.00
Total	:	Rs. 12,12,096.00

The award amount was apportioned as Rs.3,63,696/- to the first respondent wife and Rs.1,21,200/- to each of respondents 2 to 8.

4. Heard Mr.M.Krishnamoorthy, learned Counsel for the appellant and Mr.G.Jeremiah, learned Counsel for the respondent.

5. Learned Counsel for the appellant Insurance Company contended that the Tribunal has erred in awarding an exorbitant compensation for the death of a person, who was aged about 52 years when he had only 6 years of remaining service.

He further contended that the Tribunal has erred in determining the monthly income of the deceased at Rs.12,467/- by taking into account his gross income, which is contrary to the decision reported in 2004 ACJ 448 (Asha and others vs. United India Insurance Company Ltd. and another).

The next contention of the learned Counsel is that the Tribunal has erred in fixing the age of the deceased as 52 years, overlooking the evidence of P.W.3, Deputy Divisional Engineer, B.S.N.L. and Ex.P5-Service Certificate of the deceased, wherein his age is mentioned as 54 years at the time of accident. Considering the remaining years of service, Counsel for the appellant submitted that the application of '11' as multiplier for the purpose of computing compensation is erroneous.

Learned Counsel for the appellant further submitted that the conventional damages awarded to respondents/claimants, such as, compensation of Rs.25,000/- towards loss of dependency; Rs.20,000/- towards shock and mental agony suffered by respondents/claimants are excessive.

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As regards the rate of interest, learned Counsel for the appellant submitted that the accident had occurred on 22.10.2003 and therefore, the interest rate has to be scaled down from 9% to 7.5% per annum.

Inviting my attention to the evidence of P.W.3, Deputy Divisional Engineer, B.S.N.L. Department, learned Counsel for the appellant submitted that the witness had deposed that Income Tax has been deducted from the salary of the deceased. Learned Counsel also submitted that since the witness has not clearly stated as to whether the promotional aspect was in the near future, the determination of monthly income of the deceased at Rs.12,467/- is erroneous. He further contended that the Tribunal ought to have taken only the net income for the purpose of computing compensation.

6. Per contra, learned Counsel for respondents/claimants submitted that the decision rendered in Asha and others vs. United India Insurance Company Ltd., and another (2004 ACJ 448) cannot be said to be a binding precedent on the issue as to whether the net income should alone be taken for the purpose of computing compensation.

7. It is worthwhile to consider some of the decisions of various Courts dealing with the issue as to whether the Insurance amount, Provident Fund, Group Provident Fund, Premium paid towards Group Insurance Scheme or any other Social Security Scheme can be deducted from the compensation paid to the legal representatives of the victim.

(i) In Dhanpati v. State of U.P., Varanasi reported in 1992 ACJ 338, a Division Bench of the Allahabad High Court has held that the amount of insurance received by a widow of the deceased has no nexus in the matter of compensation payable to her.

(ii) A Division Bench of the Madhya Pradesh High Court in Kusumlata Tiruvedi and 2 others v. The State of M.P., & 3 others, reported in (1) 1992 ACC 686, in paragraph 8 of the judgment has held that the amount of insurance, provident fund, gratuity and family pension are not deductible from the compensation payable from the total amount of compensation assessed on account of the death under the provisions of Section 110-B of the Motor Vehicles Act.

(iii) In Sheelawati and others vs. Delhi Transport Corporation and another reported in (1) 1993 ACC 146, a Division Bench of the Allahabad High Court in para 9 has held as follows :

> "... on account of the death of the victim the claimants have become entitled to the gratuity, provident fund and insurance money as such this amount will amount to the benefit derived by the claimants..."

In Saminder Kaur v. Union of India reported in 1987 ACJ 7 (Gauhati), the Court has held as follows:

> "Family Pension: The widow of a Government employee would be entitled to family pension under the service conditions. We do not think that it is a benefit received by the widow and the wrongdoer should be allowed to take advantage of the family pension and gain by it.

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Provident Fund, Pension or Gratuity: Provident fund, or pension, or gratuity are deferred payments of satisfactory service, savings and contributions of the deceased employee. These amounts his family would have in any case been entitled to get whether the employee died a natural death or died in an accident. They ought not to be taken into consideration for determining the amount of just compensation as they cannot be termed as pecuniary benefits.

Life Insurance: Payment received for life insurance cannot also be considered as a benefit received by the widow or dependants of the deceased. Insurance money was payable because premiums were paid by the deceased and a contract was entered into for such payment on death. The tortfeasor cannot be permitted to gain by the deduction of the insurance policy amount."

(iv) In Dharambir Singh vs. Shanti Devi and others reported in 1995 ACJ 1178, the Delhi High Court has held that,

"12. ..... The Tribunal has also erred in making deductions with respect to payments received by the respondents on account of gratuity, provident fund and for lumpsum payment. These deductions are no longer valid deductions in the eyes of law."

(v) In a decision in Puransingh Fattesingh Osahan and others vs. Murlilal Chandiram Pinjani and others reported in 1 (1997) ACC 490, a Division Bench of the Bombay High Court in para 12 has held as follows :

"It must be noted here that the Motor Vehicles Act, 1939, does not lay down any specific provision has to how the compensation has to be calculated. The principles governing the calculation of the compensation have been laid down by judicial precedents and those principles areequally applicable to a case arising under the Fatal Accidents Act, 1855; because in both what is to be decided is pecuniary loss suffered by the beneficiaries by the accident and that pecuniary loss suffered by the beneficiaries is awarded as compensation to them. Therefore, it may not be correct to say that the principles evolved in the decision arising under the Motor Vehicles Act will have no application in a matter arising under the Fatal Accidents Act. When the law is so understood, we see no difficulty in holding that the deductions made by the Trial Court on account of service fund contribution, contributory provident fund, and bank account are not permissible deductions from the total amount of compensation."

Similarly, in Dharam Singh and another v. Smt. Parveen Sehgal and others, reported in AIR 1992 Delhi 347, it is held that no deductions should be made from the compensation on account of gratuity, P.F., leave encashment, life insurance proceeds, uncertainties of life and lumpsum payment. Again in the case of The Branch Manager, The Oriental Fire and

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General Insurance Co. Ltd., v. Laxmi Patra and Others., reported in AIR 1991 Orissa 310, the Hon'ble Mr.Justice Arjijit Pasayat (as His Lordship then was) held that,

> "It has to be borne in mind that what is to be assessed is compensation for deprivation of the benefit to the claimants which would have been entitled to had the deceased been alive. There is distinction between money coming into the hands of the claimant "at death" and "on account of death". The concept of mitigation of damages may be relevant while computing damages; but as indicated above, there is distinguish between the compensation and damage. There can also be a moralistic approach to the problem. A Tortfeaser is not to be given the benefit of any money that comes into the hands of the claimants on account of the death of a near and dear one"
>
> (vi) The Supreme Court in Mrs.Helen C.Rebello and others vs. Maharashtra State Road Transport Corporation reported in II (1998) ACC 512 (SC), has considered whether the life insurance money of the deceased is to be deducted from the claimants compensation receivable under the Motor Vehicles Act, 1939. Their Lordships' of the Apex Court referring to various enactment's relating to the social security scheme under the Insurance Act, held that the Insurance amount payable on the death of the deceased cannot be deducted. Their Lordships' held that the insurance amount payable to the Legal Representatives of the deceased has no nexus whatsoever with the statutory compensation payable under the Motor Vehicles Act, since the policy under the Insurance Act is a contractual one and the compensation payable under the Motor Vehicles Act is a statutory one. In paragraphs 33 to 37, the Apex Court has held as follows:

"33. Submission by the learned counsel for the appellants is, the insurance money is by virtue of a contractual relationship between the deceased and the Insurance Company and is payable to the legal heirs of the deceased in terms of the contract. Such money cannot be said to have been received by the heirs only on account of the death of the deceased, but truly it is a fruit of the premium paid by the deceased during his life time. The deceased bought this insurance policy as an act of his prudence, to confer benefit either to himself or to heirs in case of death. This amount is receivable by the claimant irrespective of the accidental death, even if he would have died a natural death. He further submits that the interpretation given by High Court confers benefit to the tortfeasor for his negligence and wrong leading to the untimely death without any contribution by him. It permits him to escape from the liability cast by the statute. Thus, his submission is, any amount payable under any contract of social assurance or any insurance, ought not to be deducted as the same is payable to the heirs because of the contract and not on account of the death of the insured person. Referring on the dictionary meaning of the word 'compensation', he submits it would mean anything given to make things equal in value. He submits that in this case the death of the deceased-husband of the

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claimant was due to the negligence of the respondents has to be offset by a just equivalent, where claimants are put back in position where they would have been but for such death. On this, he draws the conclusion, the benefits of insurance policy cannot be deducted while awarding the compensation. On the other hand, learned counsel for the respondents restricted the argument as was advanced before the High Court and submitted, the High Court, after considering all aspects including English decisions and the decisions of this Court, rightly concluded to deduct the life insurance money out of the compensation payable to the claimant.

34. So far as the general principle of estimating damages under the common law is concerned, it is settled that the pecuniary loss can be ascertained only by balancing on the one hand, the loss to be claimant of the future pecuniary benefits that would have accrued to him but for the death with the 'pecuniary advantage' which from whatever source comes to him by reason of the death. In our words, it is the balancing of loss and gain of the claimant occasioned by the death. But this has to be change its colour to the extent a statute intend to do. Thus this has to be interpreted in the light of the provisions of the Motor Vehicles Act, 1939. It is very clear, to which there could be no doubt that this Act delivers compensation to the claimant only on account of accidental injury or death, nor on account of anyother death. Thus, the pecuniary advantage accruing under this Act has to be deciphered, co-relating with the accidental death. The compensation payable under the Motor Vehicles Act is on account of pecuniary loss to the claimant by accidental injury or death and not other forms of death. If there is natural death or death by suicide, serious illness, including even death by accident, through train,air flight not involving motor vehicle, would not be covered under the Motor Vehicles Act.

Thus, the application of general principle under the common law of loss and gain for the computation of compensation under this Act, must co-relate to this type of injury or deaths, viz., accident. If the works, 'pecuniary advantage' from whatever source are to be interpreted to mean any form of death under this Act it would dilute all possiblebenefits conferred on the claimant and would be contrary to the spirit of the law. If the 'pecuniary advantage' resulting from death means pecuniary advantage coming under all forms of death then it will include all the assets movable, immovable, shares, Bank accounts, cash and every amount receivable under any contract. In other workds, all heritable assets including what is willed by the deceased, etc. This would obliterate both, all possible conferment of economic security to the claimant by the deceased and the intentions of the legislature. By

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such an interpretation the tortfeasor in supite of his wrongful act or negligence, which contributes to the death, would have in many cases no liability or meagre liability. In our considered opinion, the general principle of loss and gain takes colour of this statute, viz., the gain has to be interpreted which is as a result of the accidental death and the loss on account of the accidental death. Thus, under the present Act whatever pecuniary advantage is received by the claimant, from whatever source, would only mean which comes to the claimant on account of the accidental death and not other form of death. The constitution of the Motor Accident Claims Tribunal itself under Section 110 is, as the section states:

> "... for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to,..."

35. Thus, it would not include that which claimant receives on account of other form of deaths, which he would have received even apart from accidental death. Thus, such pecuniary advantage would have no correlation to the accidental death for which compensation is computed. Any amount received or receivable not only on account of the accidental death but that would have come to the claimant even otherwise, could not be construed to be the 'pecuniary advantage', liable for deduction. However, where the employer insures his employee, as against the injury or death arising out of an accident, any amount received out of such insurance on the happening of such incidence may be an amount liable for deduction. However, our legislature has taken note of such contingency, through the proviso of Section 95. Under it the liability of the insurer is excluded in respect of injury or death, arising out of, in the course of employment of an employee.

36. This is based on the principle that the claimant for the happening of the same incidence may not gain twice from two sources. This it is excluded thus, either through the wisdom of legislature or through the principle of loss and gain through deduction not to give gain to the claimant twice arising from the same transaction, viz., same accident. It is significant to record here is both the sources, viz., either under the Motor Vehicles Act or from the employer, the compensation receivable by the claimant is either statutory or through the security of the employer securing for his employee but in both cases he receives the amount without his contribution. How thus an amount earned out of one's labour or contribution towards one's wealth, savings, etc. Either for himself or for his family, which such person known, under the law, has to go to his

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heirs after his death either by succession or under a Will could be said to be the 'pecuniary gain' only on account of one's accidental death. This, even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnfies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any cash, Bank balance, shares, fixed deposits, etc. Though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on similar and the same place having nexus inter se between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against of course, is a pecuniary gain but how this is equitable or could be balanced out of the amount to be received as compensation under the Motor Vehicles Act. There is no co-relation between the two amounts. Not even remotely. How can an amount of loss and gain of one contract could be made applicable to the loss and gain of another contract. Similarly, how an amount receivable under a statute has any co-relation with an amount earned by an individual. Principle of loss and gain has to be on the same place within the same sphere, of course, subject to the contrary or any provisions of law.

37. Broadly, we may examine the receipt of the provident fund which is deferred payment out of the contribution made by an employee during tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event, viz., accident, which may not take place at all. Similarly, the family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension tortfeasor for his negligence on account of accident. As aforesaid, the amount receivable as

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compensation under the Act is on account of the injury or death without making any contribution towards it, then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount receivable under the life insurance policy is contractual."

(vii) In United India Insurance Co. Ltd., v. Patricia Jean Mahajan and others reported in 2002 ACJ 1441, the Supreme Court has held as follows:

"35. We are in full agreement with the observation made in the case of Mrs.Helen C.Rebello, 1999 ACJ 10(SC), that the principle of balancing losses and gains, by reason of death, to arrive at the amount of compensation is a general rule, but, what is more important is that such receipts by the claimants must have some co-relation with the accidental death by reason of which alone the claimants have received the amounts. We do not think it would be necessary for us to go into the question of distinction made between the provisions of the Fatal Accidents Act and the Motor Vehicles Act. According to the decisions referred to in the earlier part this judgment, it is clear that amount on account of social security as may have been received must have nexus or relation with the accidental injury or death, so far to be deductible from the amount of compensation. There must be some co-relation between the amount received and the accidental death or it may be in the same sphere, in absence the amount received shall not be deducted from the amount of compensation. Thus the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation. Thus the amount received on account of insurance policy of the deceased cannot be deducted from the amount of compensation though no doubt the receipt of the insurance amount is accelerated due to premature death of the insured. So far other items in respect of which learned Counsel for the insurance company has vehemently urged, for example, some allowance paid to the children, and Patricia Mahajan under the social security system no co-relation of those receipts with the accidental death has been shown much less established. Apart from the fact that contribution comes from different sources for constituting the fund out of which, payment on account of social security system is made one of the constituents of fund is tax which is deducted from the income for the purpose. We feel that the High Court has rightly disallowed any deduction on account of receipts under the insurance policy and other receipts under social security system which the claimant would have also otherwise entitled to receive irrespective of accidental death of Dr.Mahajan. If the proposition 'receipts from whatever source' is interpreted so widely that it may cover all the receipts,

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which may come into the hands of the claimants, in view of the mere death of the victim, it would only defeat the purpose of the Act providing for just compensation on account of accidental death. Such gains may be on account of savings or other investments, etc., made by the deceased would not go to the benefit of wrongdoer and the claimant should not be left worse of, if he had never taken an insurance policy or had not made investments for future returns.

36. We, therefore, do not allow any deduction as pressed by the Insurance company on account of receipts of insurance policy and social security benefits received by the claimants.

(viii) The Andhra Pradesh High Court in S.Narayanamma and others vs. Secretary to Government of India and others [II (2002) ACC 582], following Mrs.Helan C.Rebello's case, held that,

"the contributions made by the deceased-employee towards Employees' Provident Fund, Life Insurance (LIC), Group Insurance and the deductions shown in the salary certificate of the deceased-employee towards the vehicle loan instalment, benefit fund, and also the amounts received by the deceased-employee towards interim Relief, Special Pay, Dearness Allowance, House Rent Allowance, need not be deducted from the gross salary of the deceased for ascertaining the income, because the contributions/deductions made towards, E.P.F., L.I.C., Group Insurance and Benefit Fund would be beneficial to the family of the deceased-employee and it would be the estate of the deceased. "

(ix) In Bishansing Thakursing v. Nasira Kadar Shaikh, reported in I (2005) ACC 676, the Bombay High Court following the principles laid down in Mrs.Helan C.Rebello's case, held that there cannot be any deductions of amount received towards life insurance, provident fund and ex-gratia payment.

(x) In A.Lakshmi v. Arjun Associated Pvt. Ltd., reported in 2005 ACJ 704, the Andhra Pradesh High Court has considered the various decisions on this point as to whether the deductions of professional tax from the gross salary of the deceased is permissible while computing compensation. The Court has extensively considered as to whether the deferred payments receivable under the Provident Fund Act as well as Insurance Scheme being contractual benefit are deductable from the gross salary of the deceased while computing compensation. Following the principles laid down in Mrs.Helan C.Rebello's case and the decision reported in 2004 ACJ 448, the Court held that,

"savings out of his own earnings, cannot treated as payable benefit of account of accidental death. The compensation under the Act is a statutory one. While the amounts receivable in respect of contribution are

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contractual."

In Para 38, it is held as follows:

> "The gains that may be received by the victim or his dependants, may be they are out of the accident and death, on account of the savings or other investments made by the deceased would not go to the benefit of wrongdoer and the claimant should not be left worse of, if he had never taken an insurance policy or had not made investments for future returns."

In Para 39, it is held as follows:

> "Such amount cannot be deducted from the compensation payable under Section 168 of the Motor Vehicles Act, whereunder the victimhas to receive just and reasonable compensation to compensate and loss in monetary terms. Hence I hold that the only judgment of the Supreme Court in Asha's case (supra), whereunder their lordship's approved the action of the High Court in deducting the amounts paid towards life insurance premium, society charges, H.B.A., etc., is not a correct proposition."

Para 40 of the judgment reads as follows:

> "The Tribunal went wrong in taking only net salary of the deceased after deducting G.P.F., G.I.S., and L.I.C., contributions made by him during his life time. On the other hand, the Tribunal is justified in deducting professional tax in arriving at gross salary of the deceased.

(xi) In Asha v. United India Insurance Co. Ltd., reported in 2004 ACJ 448 (SC), the Supreme Court decided the question as to whether the appeal filed by the Insurance Company and the insured is maintainable or not. The Supreme Court was pleased to consider the arguments adduced by the learned counsel as to whether the High Court erred in deducting the allowances and the amounts paid towards L.I.C., Security purpose and H.B.A., from the monthly gross income for computing compensation.

General Provident Fund Act, 1945 is a beneficial enactment with the object that the employee, either from public sector or private sector in case of retirement should have some means to life or in case of death his dependants should have some means to live. Contributions are made by the employee towards provident fund and by the employer in equal proportion which carries interest. An employee can avail loan facility from the said amount, depending upon his necessities, such as illness, marriage expenses, or any other bona fide reason. The amount of contribution from his salary towards provident fund is only the part of his savings and if the employee dies during the course of his employment, whatever savings he had with accrued interest will be refunded. In other words, it is only a deferred payment and the contributions which are made is savings. Similarly, the contribution which are made under the Group Insurance Scheme, a part of social security system is also savings, which are refunded to the employee.

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Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lumpsum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependancy compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependancy compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.

9. In the instant case, Ex.P6-Salary Certificate of the deceased shows that the following recoveries were made for the month of September 2003, just one month before his death.

(i) Group Insurance	:	Rs. 30.00
(ii) G.P.F.Contribution	:	Rs. 6,000.00
(iii) Postal Life Insurance	:	-
(iv) Festival Advance	:	-
(v) GPF Advance recovery	:	-
(vi) Union	:	20.00
(vii) Scooter Advance	:	-
(viii) Sports	:	Rs. 1.00
(xi) Welfare	:	Rs. 15.00
(xii) LIC	:	Rs. 22.00
(xiii) Society	:	Rs. 300.00
Total	:	Rs. 6,388.00

10. In the instant case, the amounts, which can be deducted from the gross income of the deceased employee are (i) Rs.20/- towards Union; (ii) Re.1 towards sports; (ii) Rs.15/- towards welfare and (iii) Rs.300/- towards Society; altogether Rs.336/-. Therefore, in my opinion, a sum of Rs.336/- alone can be deducted from the gross income.

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As per Ex.P5-Service Certificate, the deceased was aged 54 years at the time of accident. P.W.3, Deputy Divisional Engineer has deposed that the deceased would have drawn Rs.13,334/- as monthly salary, if he was promoted as Senior Telephone Supervisor. It is evident from Ex.P6-Certificate of the Accounts Officer (Drawal), Office of the General Manager, BSNL, Vellore, that the deceased would have earned Rs.13,334/- as monthly salary as on 01.01.2004, if he was alive.

The Supreme Court in Sarala Dixit vs. Balwant Yadav reported in 2004 (1) ACC 398 has held that "future prospects of advancement of life should be founded in terms of money to augment multiplicand.

In Kamala vs. Sanjeev Kumar reported in 2005 (2) ACC 399, the Rajasthan High Court has held that advancement and increase in earning can be considered for awarding compensation.

11. The accident had occurred on 22.10.2003 and that the income of the deceased, if he was alive on 01.01.2004 is Rs.13,334/- less tax. Following the principles laid down in Sara Dixit's case, I am inclined to determine the income of the deceased at Rs.13,334/- and after deducting statutory payments, the monthly income of the deceased is determined at Rs.12,998/- for computing dependency compensation.

The Supreme Court in a decision reported in 2004 (2) TNMAC 372 (SC) (Rajendra Kumar and others vs. Rambhai and others) and this Court in 2004 (2) TNMAC 158 (DB) (Metropolitan Transport Corporation, Chennai vs. Padmini Sivaramakrishnan and others) have held that while applying the multiplier, the remaining period of service should be taken into account for computing the compensation. As the deceased was aged 54 years at the time of accident and being an employee of a Public Limited Company, he would have served only for six years. Therefore, applying '6'' as the multiplier to his monthly income of Rs.12,998/- and after deducting one-third of his income towards his personal expenses, the family contribution would be Rs.6,23,904/-.

12. The Tribunal has awarded Rs.20,000/- for mental agony to respondents/claimants. In a decision reported in 1975 Madras 126 (M/s.Srinivasa Roadways, Madurai vs. Saroja and others), the Division Bench of this Court has held that there cannot be any award for mental agony for the legal representatives/survivors of the deceased.

The Supreme Court in a decision reported in N.Sivammal vs. Pandian Roadways Corporation reported in 1985 ACJ 75, in paragraph 4 has held as follows :

> "4. Thereafter, the High Court proceeded meticulously to examine every item of compensation included in the award. The High Court held that award of Rs.5,000/- under the head mental agony suffered by the claimants as a result of the death of the deceased cannot legally be sustained. This is only the different way of looking at the same thing which is legally permissible. Muthukrishnan lived for 19 days since the accident and he was throughout under a shadow of death.

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He had suffered severe injuries. He must have suffered continuous pain and suffering, suffered by the deceased. Therefore, the amount of Rs.5,000/- which the High Court held inadmissible, is legitimately admissible under another head and therefore by changing the head we restore the amount of Rs.5,000/- awarded by the Tribunal."

In Andhra Pradesh State Road Transport Corporation, Hyderabad vs. Ch.Narasava and others reported in 1987 ACJ 419, the Full Bench of Andhra Pradesh High Court has held that no compensation can be awarded for mental agony suffered by the dependants.

In Marudhu Pandiyar Transport Corporation Ltd., rep. Through its Managing Director, Karaikudi vs. Mohanammal and others reported in 1997 (1) L.W. 234, a Division Bench of this Court held that the Tribunal has erred in awarding compensation for the mental agony of the survivors.

Similar view is taken by another Division Bench of this Court in Metropolitan Transport Corporation (Chennai Division I) Ltd., Chennai vs. Padmini Sivaramakrishnan and others reported in 2004 (2) TNMAC 158.

13. Following the principles laid down in the above decisions, the award of Rs.20,000/- towards mental agony is liable to be deducted. The award of Rs.25,000/- towards loss of dependency and Rs.20,000/- towards loss of happiness are also without any basis and therefore they are deducted from the final award.

14. Learned Counsel for respondents/claimants submitted that the deceased left behind his wife and 7 children at the time of his death. Excepting respondents 7 and 8, rest of them were above 20 years at the time of his death. The second respondent was married at the time of filing of the claim petition. The award of Rs.20,000/- towards loss of love and affection is inadequate and that therefore, it would be reasonable to enhance the award by a further sum of Rs.50,000/- as compensation towards loss of love and affection, which could be equally distributed to all the children.

15. Taking into account the date of accident, i.e., 22.10.2003 and the prevailing rate of interest, the interest rate is scaled down from 9% to 7.5% per annum.

16. In the result, respondents/claimants are entitled to Rs.7,23,904/- as compensation, as apportioned hereunder, with interest at the rate of 7.5% per annum from the date of claim till the date of realisation.

(i) Dependency compensation	:	Rs.6, 23,904.00
(ii)Loss of love and affection	:	Rs. 70,000.00
(iii)Funeral expenses	:	Rs. 5,000.00
(iv)Loss of consortium	:	Rs. 25,000.00
Total	:	Rs.7, 23,904.00

This Court by order dated 04.04.2006 has directed to deposit the entire award amount within a period of eight weeks from the date of

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receipt of a copy of this order. Therefore, the Tribunal is directed to refund the balance amount with proportionate accrued interest to the appellant Insurance Company within a period of two months from the date of receipt of a copy of this order.

The Civil Miscellaneous Appeal is disposed of with the above direction. No costs. Consequently, connected C.M.P.No.4608 of 2006 is closed.

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Sd/-
Assistant Registrar,

/ture copy/

Sub Assistant Registrar.

To
1. The Motor Accidents Claims Tribunal, (Subordinate Judge), Thiruvallur. (with REcords if any)
2. The Section Officer, V.R.Section, High Court of Madras, Chennai.
+ One cc to mr. M. Krishnamoorthy, Advocate SR.No.5354
+ One cc to mr. P. Krishnan, Advocate sR 5683
JE (co)
sg 8/3/07

JUDGMENT IN
C.M.A.No.1114 OF 2006

29.01.2007

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